



February 24, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Subject: Empowering Parents and Protecting Children in an Evolving Media Landscape; MB Docket No. 09-194; FCC 09-94

Filed online at <http://www.fcc.gov/cgb/ecfs>

Dear Ms. Dortch:

The Council of Better Business Bureau (BBB), through its Children's Food and Beverage Advertising Initiative (CFBAI or Initiative), appreciates the opportunity to provide comments on the FCC's Notice of Inquiry (NOI), "Empowering Parents and Protecting Children in an Evolving Media Landscape," 74 FR 61308 (Nov. 24, 2009). The NOI poses several questions regarding the role of the CFBAI in addressing the challenge of childhood obesity.

To respond to these questions, our comment addresses how the CFBAI: (1) is shifting the mix of ads to include products that have fewer calories and are lower in fat, sugar and sodium and are more nutrient dense; (2) requires that child-directed Internet advertising and advergames that includes branded foods be limited to healthier or better-for-you options; (3) is improving the landscape of children's advertising through the voluntary efforts of its 16 participants; and (4) is a dynamic program committed to seeking further progress.

I. Introduction

Childhood obesity is a national challenge requiring multiple strategies and interventions. The BBB and leading food companies have stepped forward to be a part of the solution by using advertising that is primarily directed to children under

Council of Better Business Bureaus, Inc.

4200 Wilson Boulevard, Suite 800 • Arlington, Virginia 22203 • Phone: 703.276.0100 • Fax:
703.525.8277

12 (“child-directed”) to promote healthier dietary choices and lifestyles. Under the CFBAI’s leadership, self-regulation has led to significant changes in the landscape of food advertising to children under 12.

The participants have made strong, voluntary and transparent commitments to the CFBAI regarding their child-directed advertising. Four participants are not engaging in advertising primarily directed to children under 12 at all and the others now use science-based nutrition standards to govern their child-directed advertising. The participants’ nutrition standards are driving product reformulation and innovation. As a result the fat, sugar, sodium or calorie content of foods advertised to kids has been reduced, and their nutrient density increased. For example, during the last several years, as the Initiative became operational, the participants have reformulated or newly created more than 100 products to meet nutrition standards.

Additionally, as a dynamic program, committed to improving self-regulation’s contribution to the fight against childhood obesity, the CFBAI has grown to 16 from 10 participants thereby increasing its marketplace penetration, strengthened the Initiative by increasing the commitment required from participants for advertising to 100% from 50%, and expanded the scope of advertising covered by the Initiative to include additional media venues and formats.

We note that among the range of issues that the FCC is considering in its NOI, parental concern seems far higher regarding programming content and non-food advertising than for food advertising. For example, a recent study found that although parents are concerned about inappropriate media content, advertising to children is a lesser concern, and food advertising ranks near the bottom of the types of advertising for which there is concern.¹ Specifically, “two-thirds of parents say they are ‘very’ concerned that children in this country are exposed to too much inappropriate content....”² In contrast, only “34% say they are ‘very’ concerned that their children are exposed to too many ads in the programming they watch”³ Among those who are concerned, “just 10% named food advertising as the issue that concerns them most.”⁴ Parents, of course, favor healthy food advertising to

¹ See “Parents, Children, and Media,” a Kaiser Family Foundation Survey (June 2007).

² *Id.* at 1.

³ *Id.* at 6.

⁴ *Id.* Parents cited ads for toys, video games, clothing, and alcohol/beer as of greater concern than food ads. These results are consistent with findings of a Rudd Center 2008 Survey, which found significant

children, and the Initiative's goal of shifting the mix of advertising to kids supports parents in guiding their children to healthier dietary choices and healthy lifestyles.

Below, our comment begins with basic background information about the BBB. That is followed by a detailed description of the CFBAI, how it works and what it covers. Then we describe the CFBAI's specific requirements for Internet advertising and advergames, and provide a summary of the progress that has been made in shifting the mix of child-directed food advertising. Our comment concludes with a summary of steps we plan to take to further strengthen our already strong program of self-regulation by the nation's leading food companies.

II. About the BBB

The Council of Better Business Bureaus, a non-profit 501(c)(6) membership organization, is the umbrella organization for local Better Business Bureaus, which are grassroots organizations that foster a fair and honest marketplace and an ethical business environment. BBB also administers a number of self-regulation programs including the National Advertising Review Council, the *Children's Advertising Review Unit* and the *Children's Food and Beverage Advertising Initiative*.

BBB's mission is to be the leader in advancing marketplace trust and to be the "go to" organization and partner of choice for marketplace concerns. In addition, BBB has an equal and compelling commitment to be the resource of choice for consumers. Recent survey data show that BBB is achieving its goals. Most consumers are familiar with the BBB and a substantial majority says the BBB plays an important role in promoting ethical business practices and high standards for business reliability and consumer responsiveness.

III. About the CFBAI

Background. Launched in November 2006 by BBB and 10 leading food advertisers, the Initiative now has 16 participants, which represent a substantial majority of the

levels of concern with the effect of media on young people, with the greatest concern expressed about sexual permissiveness, violence and materialism. Respondents also expressed concern about bad eating habits portrayed in the media and food marketing to kids, "but these concerns were low relative to other media effects." "Public Perceptions of Food Marketing to Youth, Results of the Rudd Center Public Opinion Poll, May 2008," Rudd Center for Food Policy & Obesity (2009) at 13.

food advertising that is primarily directed to children under 12. The Initiative's goal is to be part of a multi-faceted solution to the complex problem of childhood obesity by using advertising to help promote healthier dietary choices and lifestyles among children under 12. To accomplish this goal the CFBAI aims to shift the mix of advertising primarily directed to children under 12 so that advertising includes healthier or better-for-you products, as determined by science-based nutrition standards. Under the Initiative's Core Principles, participants commit that 100% of their child-directed advertising will be for healthier products or not to engage in child-directed advertising at all.⁵

Historically, self-regulation has focused on children under 12, and thus the CFBAI's efforts also focus on this age group. Although studies suggest various ages at which children begin to understand the persuasive intent of advertising, it is generally agreed that by age 12 children do have that ability. Because special protections are important for children under 12, the advertising industry always has had a set of stringent rules for advertising primarily directed to children under 12.

A principal proponent of self-regulatory efforts in the area of advertising to children is the Children's Advertising Review Unit or CARU, which is a BBB-administered program whose operational policies are set by the National Advertising Review Council (NARC).⁶ CARU has promoted responsible advertising to children under 12 since 1974.⁷ CARU and CFBAI are complementary programs. While CFBAI focuses on WHAT foods are advertised to children, CARU focuses on HOW products, including foods, are advertised to children.⁸

⁵ The CFBAI's original Core Principles required that participants commit to advertising healthier products at least half the time but all participants committed that 100% of their child-directed advertising would meet this goal. In December 2009 the CFBAI announced Enhanced Core Principles that formalized the 100% commitment in the Principles, effective January 1, 2010. The Enhanced Core Principles also eliminate the option of satisfying the Initiative's advertising commitment through healthy lifestyle messaging or some combination of better-for-you product and healthy lifestyle messaging. Now all advertising commitments must be met through healthier products (or by not advertising). Nonetheless, the participants will continue to support and promote healthy lifestyles. The Enhanced Core Principles are available at www.bbb.org/us/enhanced-core-principles/.

⁶ NARC is a strategic alliance of the advertising industry and the BBB.

⁷ CARU has long had Guidelines for children's advertisers to ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audience and it updates these Guidelines periodically to reflect marketplace and media developments. See *also* the comment CARU has filed in this proceeding.

⁸ CARU's Guidelines help ensure that food advertising to children is appropriate by:

- Requiring that depictions of food being eaten are tied to the labeled serving size
- Prohibiting the disparagement of healthy foods or lifestyles, and
- Requiring that mealtime depictions of foods be shown in the context of a nutritionally balanced meal.

Participants' Commitments. Three candy companies no longer advertise to children under 12 at all, and another participant is continuing its longstanding commitment to not advertise to this audience.⁹ Twelve participants have pledged to advertise to children under 12 only foods that meet science-based nutritional standards that BBB has reviewed and approved.¹⁰ As discussed below, these commitments cover advertising in television, print, radio and the Internet, as well as newer advertising platforms and channels such as cell phones and word of mouth marketing.

Nutrition Standards Are Science Based and Familiar to Nutrition Professionals. Before the CFBAI was launched, few companies had articulated standards or comprehensive standards for child-directed food advertising. Under the CFBAI, however, nutrition standards now govern what products appear in participants' child-directed food advertising. And, the nutrition standards the companies use are familiar, recognizable ones. They are generally based on the Dietary Guidelines for Americans (2005) and Food and Drug Administration standards, such as FDA's definition of "healthy." The familiar "35, 10, 35" metric is commonly used.¹¹

This Initiative's approach of balancing flexibility (company-proposed nutrition standards) with rigor (standards must be science based and approved by BBB) and transparency (standards and commitments are publicly available on BBB's website) has encouraged participation and competition among the participants, resulting in significant improvements in products advertised to children. This progress is discussed in greater detail in Section V of our comment.

CFBAI Covers Traditional and New Media Platforms. The CFBAI broadly defines child-directed advertising to cover traditional and new media platforms and channels. Under the CFBAI's Core Principles, participants commit to devote all of their advertising primarily directed to children under 12 on TV, radio, print and the Internet to products that meet their nutrition standards. "Internet advertising" includes advertising on child-directed third-party websites and company-owned sites

⁹ The participants that do not engage in child-directed advertising are Cadbury Adams USA LLC, The Coca Cola Co., Hershey Co., and Mars Snackfoods US, LLC. In addition, Nestlé USA no longer advertises its Wonka brand (or other confections) to children. It may advertise other products that meet its nutrition standards, such as 100% fruit juice.

¹⁰ These are Burger King Corp.; Campbell Soup Company; ConAgra Foods, Inc.; The Dannon Company; General Mills, Inc.; Kellogg Company; Kraft Foods Global, Inc.; McDonald's USA, LLC; Nestlé USA; PepsiCo, Inc.; Post Foods, LLC; and Unilever United States.

¹¹ This means that no more than 35% of calories can come from fat, less than 10% calories from saturated fat and no more than 35% of calories from sugar (or no more than 35% sugar by weight).

that are primarily directed to children under 12.¹² The Core Principles also have always included a separate commitment regarding participants' "Interactive Games" (commonly referred to as "advergaming"), which often are part of the content of company-owned websites. The CFBAI's requirements for advergaming are discussed more extensively in the Section IV.

Consistent with the Initiative's focus on child-directed advertising, the CFBAI and its participants announced in December 2009 that the CFBAI's scope was being expanded, effective January 1, 2010. The venues and types of marketing covered by the Core Principles now also include advertising on video and computer games rated EC or Early Childhood, other video games that are age-graded on the label as being primarily child-directed, and cell phone marketing that is primarily directed to children under 12. Word of mouth advertising that is primarily directed to children under 12 is also covered. Although we expect television to continue to be the main venue for advertising to children, the Core Principles now include newer and still-emerging platforms.¹³

CFBAI Has Extensive Marketplace Penetration. At the time the Initiative began, the participants represented a substantial portion of child-directed food and beverage advertising, and they continue to do so. At the outset, the 10 original participants were estimated to represent at least two-thirds of the television advertising expenditures for food and beverage advertising to children in 2004.¹⁴ Since then, an analysis conducted by Georgetown Economic Services indicates that food, beverage and restaurant advertising from the then 15 participants represented more than 80% of the advertising that children 2-11 saw on children's programming during 2007.¹⁵ The percentage of the child-directed advertising market the participants represent is not, of course, a static number or one that automatically increases with the addition

¹² The CFBAI's most recent report, "A Report on Compliance and Implementation During 2008" (hereafter "CFBAI 2008 Report") is available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/info>. Appendix E to the Report includes a table of child-directed company-owned websites maintained by participants in 2008.

¹³ Games rated "EC" or "Early Childhood," or games that are age-graded on the label or packaging, are inherently directed to children under 12 and for this reason were included in our Enhanced Core Principles.

¹⁴ See BBB Press Release dated July 18, 2007, available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/info/>.

¹⁵ See BBB Press Release dated Jan. 14, 2009 at <http://www.bbb.org/uschildren-food-beverage-advertising-initiative/info/>. Our own informal analysis of advertising on 54 hours of children's programming in March 2009 found that a large majority of ads were CFBAI participant ads (70%) and most of the products were participants' products (68%). See CFBAI 2008 Report at 13-14.

of new participants. Nevertheless, the participants still represent the majority of advertisers who engage in child-directed food and beverage product advertising.¹⁶

Participant Compliance with CFBAI Commitments Is High. We recently published our second compliance and progress report, on the year 2008, the first full year of CFBAI participant implementation.¹⁷ During 2008, 12 of the then 15 (now 16) participants had implemented their pledges. We found excellent compliance with only a few minor problems that were quickly addressed.

IV. CFBAI Requirements for Child-Directed Internet Advertising and Advergaming

The CFBAI always has included Internet advertising within the scope of its Core Principles. "Internet advertising" includes advertising on third-party websites and company-owned sites that are primarily directed to children under 12.¹⁸ The Core Principles also have always included a separate commitment regarding "Interactive Games," which are commonly referred to as "advergaming." These games are often part of the content of company-owned websites. Participants commit that, in any interactive game primarily directed to children under 12 where the company's food or beverage products are incorporated into the game, the interactive game will incorporate or be accompanied by healthy dietary choices or better-for-you products.¹⁹ There is no requirement that games feature branded products. In general, the participants committed that any depicted branded foods would be limited to their healthier products.

The CFBAI 2008 Report included our review of child-directed games on company-owned and third-party sites to verify that branded food and beverage products were

¹⁶ A number of factors affect any estimate of the Initiative's marketplace penetration. For example, since the last analysis was done some new participants have stopped advertising to children, and others have done less advertising than before. The amount of advertising by non-participants also will vary. In addition, the Federal Trade Commission's 2007 Report, "Children's Exposure to TV Advertising in 1977 and 2004" (June 1, 2007) reported that the amount of food and beverage ads children are exposed to declined significantly, as did the amount of child-directed food and beverage ads. Available at <http://www.ftc.gov/os/2007/06/cabebw.pdf>. Data the Grocery Manufacturers Association presented at the FTC Forum "Sizing Up Food Marketing and Childhood Obesity" (Dec. 15, 2009) confirmed this trend. It reported that food and beverage advertising to children under 12 declined, again, from 2007 to 2008. Data available at <http://ftc.gov/bcp/workshops/sizingup/presentations/Sophos.pdf>.

¹⁷ CFBAI 2008 Report.

¹⁸ CFBAI 2008 Report, Appendix E. Some of the sites listed in this table may no longer be active. Some companies have implemented age-screening in accordance with recommended procedures under the Children's Online Privacy Protection Act and CARU Guidelines, to restrict the ability of under-age children to access interactive games and other features.

¹⁹ Until January 1, 2010, the Interactive Game requirement also could be satisfied by including healthy lifestyle messaging.

limited to pledge-approved products. We found very high compliance regarding this commitment, as we found regarding participants' commitments overall. An appendix to the Report summarized these child-directed games.²⁰

Although the CFBAI does not require that participants take any particular steps to support the Initiative's general "healthy lifestyles" goal, participants typically provide healthy lifestyle and/or nutrition messaging on their child-directed websites. The CFBAI 2008 Report summarized information regarding these child-directed, web-based healthy lifestyle messages.²¹ To facilitate the FCC's consideration of media tools that may provide a resource for children to help them learn about nutrition (74 FR at 61311), below we describe and provide examples of several different types of healthy lifestyle messaging included on participants' websites.

Some participants' games featured food groups to be encouraged, such as dairy, fruits and vegetables.²² Other sites included activity screen breaks that pause the online activity to encourage children to engage in another "more active" activity. Other participants' websites featured healthy lifestyle messages such as "Get Active" pledges and "Activity Trackers," how-to-instructions on outdoor games, or messages touting the importance of physical activity. See Figures 1-5 below for screen shots of some of these website pages.

²⁰ "Synopsis of Interactive Features on Participant Websites Primarily Directed to Children Under 12 (2008)" appears as Appendix F to the CFBAI 2008 Report.

²¹ *Id.*

²² For example, Burger King Corp.'s child-directed website featured a game that incorporated milk, apples and cheese. A General Mills' kid-directed website featured a grocery store where kids could shop from the five main food groups. See CFBAI 2008 Report, Appendix F.

Figure 1a: Screen Shot of Kellogg's Activity Break

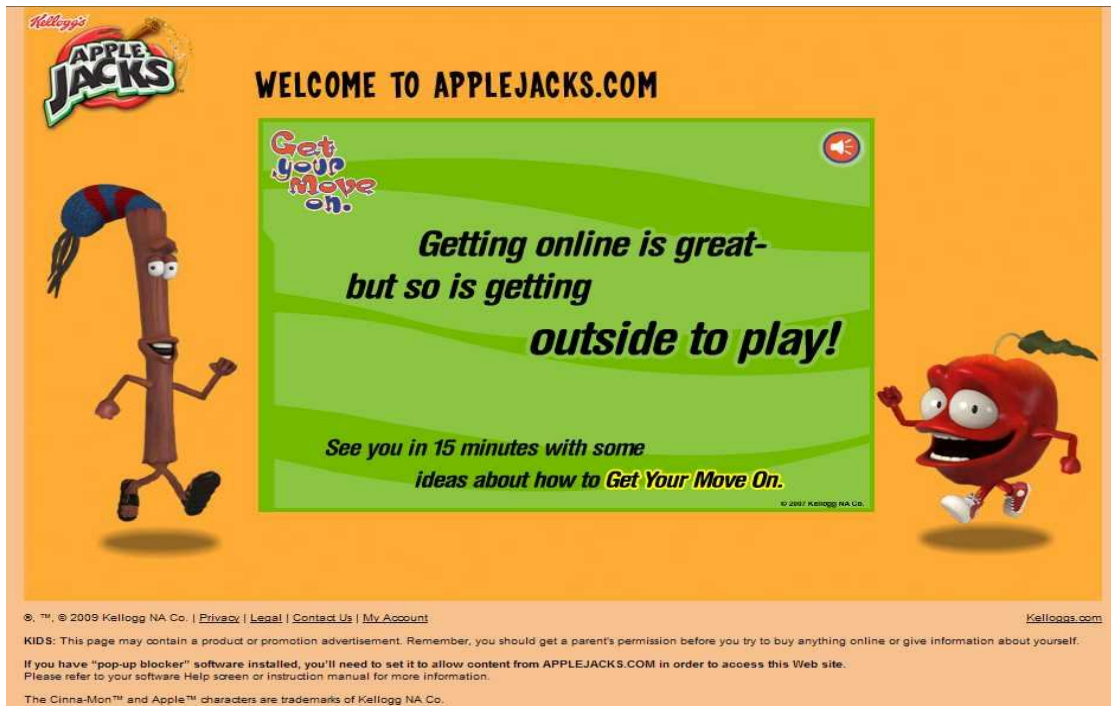


Figure 1b: Screen Shot of Activity Break



Figure 2: Downloadable Instructions for Outdoor Games on ConAgra Foods' Kidcuisine.com site



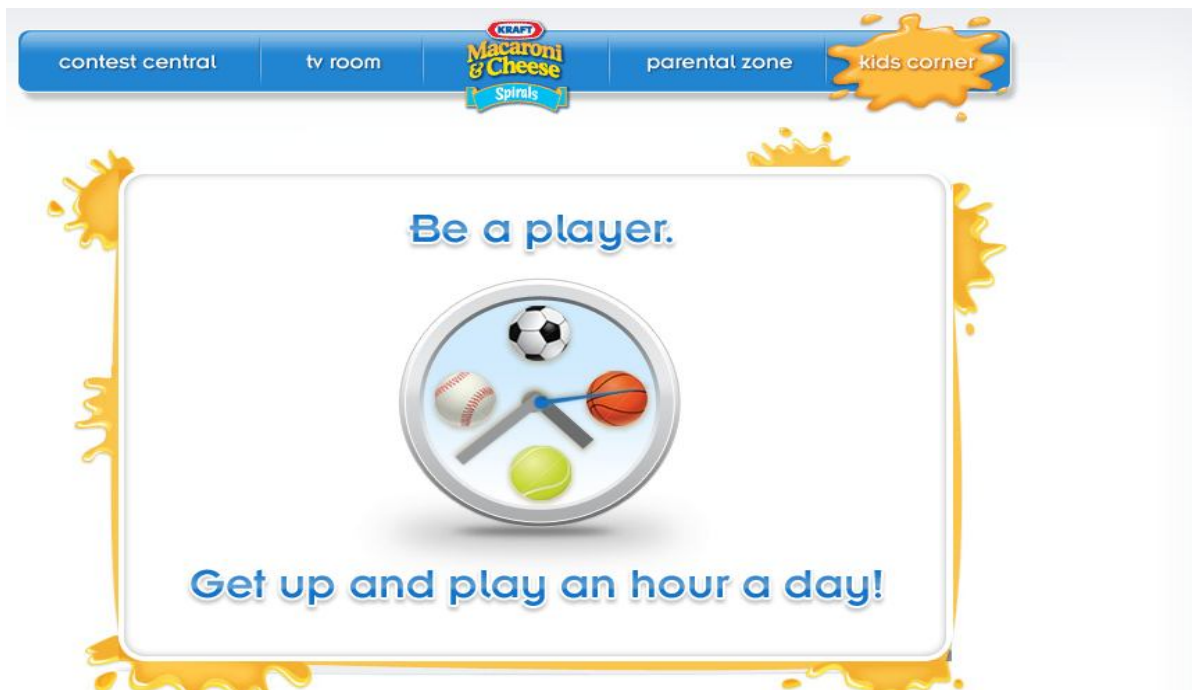
Figure 3: Screen Shot of Activity Tracker Provided by Campbell Soup Co.



Figure 4: Screen Shot of McDonald's "Ideas to Move It" Healthy Lifestyle Messaging



Figure 5: Screen Shot of Kraft Foods' Webpage Encouraging Physical Activity



One participant also has two child-directed websites focused solely on healthy lifestyle messaging, neither of which refers to branded products.²³ See Figure 6 for an example.

Figure 6: Screen Shot of General Mills' Healthy Lifestyle Messaging



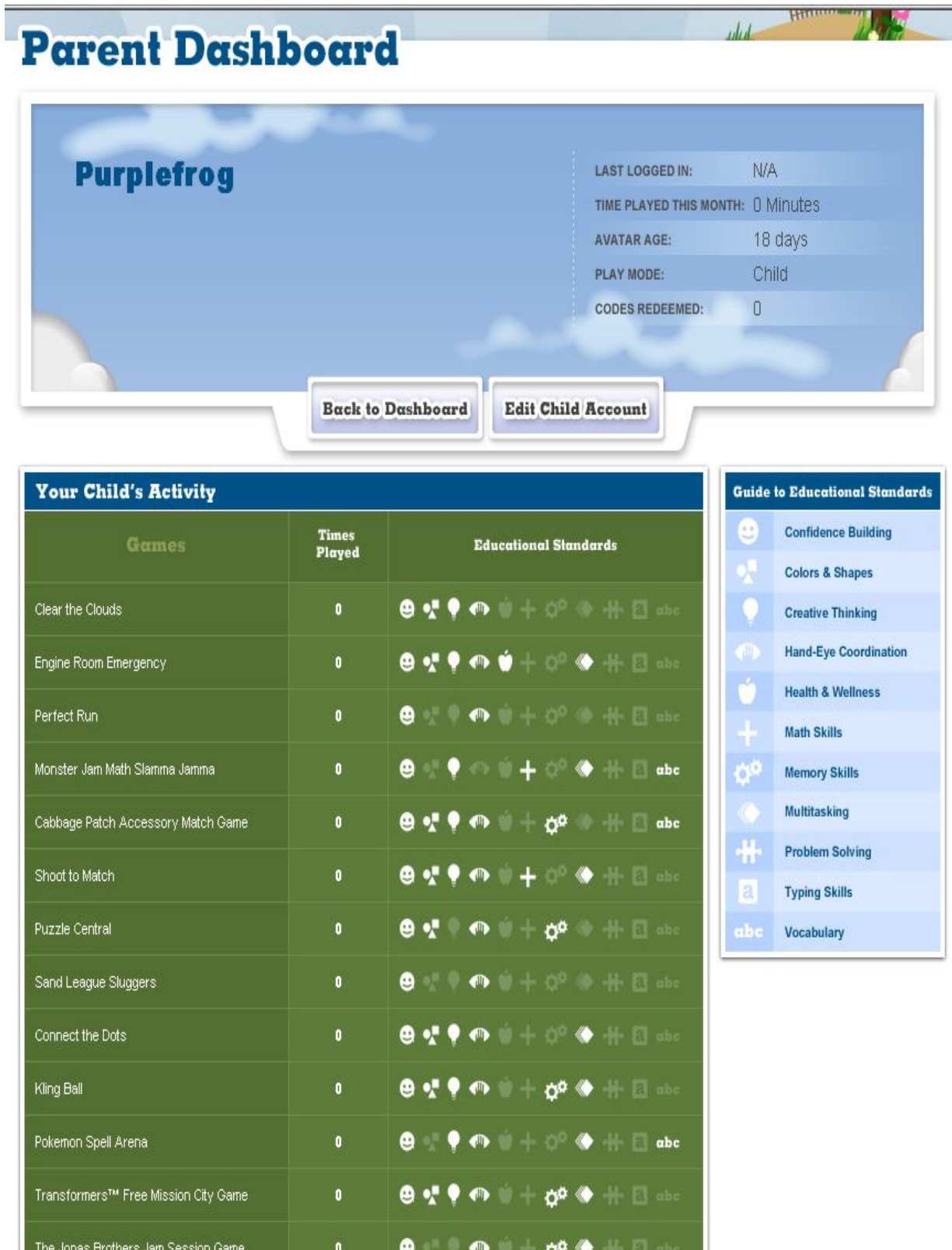
Another participant, Burger King Corp. (BKC), has created a control device to help parents monitor their children's activity on the company's child-directed website. The BKC "dashboard" allows parental monitoring of kids' activities on the company's ClubBK® website. By setting up a parent account, parents have direct access to their child's account and can use the "dashboard" to:

- create and validate the child's account, including game settings and "child" or "teen" modes
- monitor the child's activity and time on the site, and
- view and edit their account setting and preferences.

Figure 7 provides a screen shot that illustrates the types of information the dashboard provides to parents.

²³ General Mills' site www.choosebreakfast.com teaches kids the importance of a nutritious breakfast. At www.mightygiants.com, the company's equity characters Sprout and the Jolly Green Giant promote good nutrition and exercise. CFBAI 2008 Report at 35.

Figure 7: Screen Shot of ClubBK®'s Parent Dashboard



V. CFBAI Participants Are Shifting the Mix of Child-Directed Advertising to Healthier or Better-for-You Products

As noted, BBB and leading food and beverage advertisers created the CFBAI to be a part of the multi-faceted approach that is needed to address childhood obesity and to support the efforts of the primary influencers in children's lives, parents and schools. Participants' use of nutrition standards to govern what may be advertised to children has driven change. Participants have reformulated and created at least 100 products to meet their standards, and at least 30 products that already met nutrition standards were further enhanced.²⁴ The result is healthier food options that have fewer calories and contain less sugar, fat and sodium, and that provide important food groups and nutrients that are shortfalls in children's diets.²⁵

No individual product, including cereals, yogurts, crackers, or other snacks has more than 200 calories per serving, and most have far less. Main dishes and meals that are advertised to children have no more than 350 and 600 calories respectively. The advertised products also are lower in fats, sodium and sugars, and are more nutrient dense. For example,

- The sugar content of cereals advertised to kids has been reduced from as much as 16 grams of sugar per serving to the point where now almost two-thirds have 11 grams or less per serving. The vast majority also are a "good" (10% Daily Value) source of Vitamin D and a "good" to "excellent" (20% Daily Value) source of essential vitamins and minerals. More than half provide 8 grams or more of whole grains per serving.²⁶ And, even more improvements to their nutrient profile and density are planned.
- The sodium content of many soups and canned pastas that are advertised to kids has been reduced by 20 and 30 percent.
- Fast food restaurants advertise healthier choices with their kids' meals, including fresh apple slices or low-fat or skim milk, or 100% juice. As CFBAI participants, McDonald's and Burger King Corp.'s child-directed advertising has changed and now helps to popularize healthy foods, such as apples. No longer are soft drinks and French fries featured in their advertised kid's meals.

²⁴ For example, several cereals that already met participants' sugar limits were reformulated to contain even less sugar, or the amount of important nutrients, such as Vitamin D, was increased. For other products, fat or sodium content was further reduced.

²⁵ The shortfall nutrients for children are: calcium, fiber, potassium, magnesium and Vitamin E.

²⁶ See the CFBAI's "Cereal Snapshot Fact Sheet," available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/info>.

Now the kid's meals that are advertised meet strict limits for calories, fat and sugars.

It is also noteworthy that most participants' ads have been for foods and beverages that provide at least a good source of a shortfall nutrient for children — including calcium and fiber — or a half serving of a food group recommended for increased consumption (fruits, vegetables, low-fat dairy and whole grains).²⁷

Considerable effort and many millions of dollars already have gone toward reformulation and innovation efforts, and these efforts are continuing.

VI. Conclusion

The CFBAI and its participants have worked hard to improve the nutritional profile of foods advertised to children under 12, and have achieved much in a relatively short amount of time.²⁸ Through the Initiative, four participants, including major candy companies, are not advertising to kids. Further, nutrition standards adopted by the other 12 participants are changing the foods that are advertised to children.

- Reformulation and Innovation Efforts. More than 100 products have been reformulated or newly created to meet nutrition standards.
- Nutrient Density Profile. Many of the advertised products or meals provide at least a half serving of a food group recommended for increased consumption or are a good source of a shortfall nutrient for children.

We are proud of the progress that self-regulation has made toward shifting the mix of food advertising to kids. Our work, however, is not done. Our intent always has been for the Initiative to be a dynamic program that would evolve over time. And indeed, as noted, we already have enhanced the CFBAI's Core Principles and made them more comprehensive. Now in addition to covering child-directed advertising on TV, Internet, print and radio, participants' commitments include digital and mobile media platforms and other marketing channels.

²⁷ This is based on a snapshot CFBAI took of the nutritional profile of participants' ads on 54 hours of children's programming in March 2009. 83% of the participant ads were for products that met our study criteria, and of the products, 67% met the study criteria. See CFBAI 2008 Report. See also CFBAI's "Nutrient Snapshot Fact Sheet," available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/info>.

²⁸ The first full year of pledge implementation for most participants was 2008.

BBB will continue to work to strengthen the CFBAI's principles and to expand the Initiative to include more children's food advertisers. One of our next steps includes conducting a Nutrition Science Review, to be held later this year, to consider the Institute of Medicine's report on sodium, which is expected to be released soon,²⁹ the Interagency Working Group report to Congress, expected in July 2010,³⁰ and the revised Dietary Guidelines for Americans, expected in fall 2010. The Initiative also will continue to nourish and stimulate competition among participants to improve further the nutritional profile of foods and beverages in child-directed advertising.

We would be delighted to answer any questions that you might have about the CFBAI and to provide further information upon request. Our contact information is below.

Respectfully submitted,



Maureen Enright
Assistant Director, CFBAI
Email: menright@council.bbb.org
Phone: 703-247-9319



Elaine D. Kolish
Vice President and Director, CFBAI
Email: ekolish@council.bbb.org
Phone: 703-247-9382

²⁹ The IOM's Food and Nutrition Board convened an ad hoc consensus committee to review and make recommendations about how American can reduce sodium intake. The planned release date for the report is February 2010. More information is available at www.iom.edu/Activities/Nutrition/ReduceSodiumStrat.aspx.

³⁰ Under HR 1105, Congress charged FTC, CDC, FDA and USDA with developing recommendations on nutrition standards on marketing to children under 18 and providing them in a report to Congress by July 2010.